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October 27, 2011

Mr. Kevin Shade, Enforcement Officer  
Superfund Enforcement Assessment Section (6SF-TE)  
U.S. EPA Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

**Via Federal Express**

Re: Response to CERCLA 104(e) Information Request;  
Gulfco Marine Maintenance Superfund Site, Freeport, Texas ("Site")

Dear Mr. Shade:

This correspondence and the attachments hereto are being submitted on behalf of Kirby Corporation and its affiliates (hereinafter collectively referred to as "Kirby") in response to the "CERCLA Section 104(e) Information Request" dated August 30, 2011 relating to the above-referenced Site. Kirby's Response is being submitted timely pursuant to the 30-day extension to respond granted in correspondence dated September 28, 2011 from Mr. Wren Stenger, Associate Director, Technical and Enforcement Branch, Superfund Division, EPA Region 6, to counsel for Kirby Corporation.

I would like to emphasize at the outset that Kirby believes that it has no liability pursuant to Section 107 of CERCLA (42 USC § 9607) for this Site. It is Kirby's position that it did not "arrange for the disposal or treatment", "arrange with a transporter for transport for disposal or treatment", or "accept for transport to disposal or treatment facilities" of hazardous substances at the Site as those terms are used within CERCLA. Similarly, Kirby believes it is not a "generator", a "transporter", an "owner", or an "operator" with respect to the Site. To Kirby's knowledge, the release(s) of hazardous substances which allegedly occurred at this Site occurred well before Kirby had any association with the Site and Kirby has done nothing to contribute to or exacerbate the effects of those alleged release(s).



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Despite the fact that Kirby has no CERCLA liability for this Site and cannot be shown to have contributed in any way to any release of hazardous substances at the Site, Kirby has made a good faith effort to respond to the Section 104(e) Information Request. The Response is attached hereto.

Please let me know if you have any questions.

Sincerely,

*William Moltz* as:  
William J. Moltz  
*Janessa Glenn*  
*w/permission*

WJM/pjp

Attachment

cc: Anne Foster, Assistant Regional Counsel  
(w/o attachment; via fax)

**Response to CERCLA 104(e) Information Request**  
**Gulfc0 Marine Maintenance Superfund Site, Freeport, Texas**

**General Objections**

A number of questions in the Request contain terms that are undefined, overly broad or ambiguous. Kirby has endeavored to provide responses and information in this Response that are based on its reasonable reading of the terms used in this Request. In so responding, Kirby is not waiving its objections to the lack of definition, overbreadth or ambiguity of the terms used in this Request.

Kirby has reserved its right to withhold documents on the basis of legally recognized privileges, including the attorney-client and attorney work product privileges, and Kirby has not provided reports of self-analyses or self-audits on the basis of EPA policy.

Kirby has only provided information known by its own personnel, and Kirby has only reviewed or provided documents located in its own files.

Kirby objects to the Request to the extent that it seeks information beyond the scope of EPA's authority under Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C.A. Section 9601 et seq., "CERCLA"). EPA's Section 104(e) authority extends only to information reasonably relevant to the Agency's CERCLA enforcement and compliance powers. Kirby further objects to the Request to the extent it seeks information related to events and/or activities that are beyond EPA's authority and/or jurisdiction due to the applicability of any relevant statutes of limitation.

Kirby construes its obligations to respond to the Information Request as governed by the scope of the Agency's authority pursuant to Section 104(e), and has interpreted such requests on the premise that the Information Request is reasonably related to information relevant to the Agency's lawful objectives pursuant to Section 104(e).

In answering the CERCLA 104(e) Request, Kirby does not admit it is a generator of any hazardous substances as defined in CERCLA, that it arranged by contract or otherwise for disposal or treatment of any hazardous substances as defined in CERCLA, or that it accepted any hazardous substances as defined in CERCLA for transport to disposal or treatment facilities with respect to the Gulfc0 Marine Maintenance Superfund Site (hereinafter referred to as "the Gulfc0 Site").

Kirby's production of documents does not represent or act as an admission that the contents of the documents are true, correct or accurate, nor does it act to authenticate such documents for the purposes of admissibility in any administrative or judicial proceeding.

This Response does not in any way constitute a waiver of any other objections Kirby may have as to the reasonableness and scope of the request.

## **General Information Concerning Respondent**

### **1. Provide the full legal name and mailing address of the Respondent.**

The Respondent is:

Kirby Corporation  
55 Waugh Drive, Suite 1000  
Houston, TX 77007  
P.O. Box 1745  
Houston, Texas 77251-1745  
Main Phone: (713) 435-1000  
Fax: (713) 435-1010

The CERCLA 104(e) Request was issued to Dixie Carrier's, Dixie Linehaul, Kirby Inland Marine, Inc., Kirby Corporation, and TPT Transportation. Dixie Linehaul is not now and has never been a legal entity. It was historically the name of a division of Dixie Carriers, Inc., commencing 1993. In an effort to be cooperative, we are submitting information for the following related entities, whose relationship to Kirby Inland Marine, L.P. is described in response to Question 7.

Dixie Carriers, Inc.  
TPT Transportation Company  
Hollywood Marine, Inc.  
Scott Chotin, Inc.  
Kirby Inland Marine, L.P.

These entities are collectively referred to as "Kirby" or "Respondent."

### **2. Identify and provide the full name, title, business address, and business telephone number for each person answering these questions on behalf of the Respondent, and each person(s) that was relied on or consulted with in the preparation of the answer.**

The responses were prepared by Kirby representatives after a review of the relevant documents and discussions with knowledgeable personnel. It cannot be said, therefore, that any one document or one person is responsible for a specific response. Kirby, has, however, made a good faith effort to fully respond to EPA's request.

Subject to the General Objections set forth previously herein, Kirby responds as follows:

With the exception of legal counsel, the following individuals were involved in the preparation of this Response:

Morgan Johnson, PE  
Environmental Compliance Manager  
Kirby Corporation  
(713) 435-1311

Kim Darnell  
Claim Manager  
Kirby Corporation  
(713) 435-1033 office

Amy Husted  
Vice President – Legal  
55 Waugh Drive, Suite 1000  
Houston, TX 77007  
P.O. Box 1745  
Houston, Texas 77251-1745  
Main Phone: (713) 435-1000  
Fax: (713) 435-1010

Mark Buese  
55 Waugh Drive, Suite 1000  
Houston, TX 77007  
P.O. Box 1745  
Houston, Texas 77251-1745  
Main Phone: (713) 435-1000  
Fax: (713) 435-1010

Bob Livingston  
Manager – Barge Maintenance  
55 Waugh Drive, Suite 1000  
Houston, TX 77007  
P.O. Box 1745  
Houston, Texas 77251-1745  
Main Phone: (713) 435-1000  
Fax: (713) 435-1010

Olen Murphy  
Operations Manager for Barge/Environmental  
55 Waugh Drive, Suite 1000  
Houston, TX 77007  
P.O. Box 1745  
Houston, Texas 77251-1745  
Main Phone: (713) 435-1000  
Fax: (713) 435-1010

Carl Whitlatch  
55 Waugh Drive, Suite 1000  
Houston, TX 77007  
P.O. Box 1745  
Houston, Texas 77251-1745  
Main Phone: (713) 435-1000  
Fax: (713) 435-1010

Cathy Huffenus  
No longer employed by Kirby  
Contact Information Unknown

- 3. If Respondent wishes to designate an individual for all future correspondence concerning this Site, including legal notices, please provide the individual's name, address, and telephone number.**

Amy Husted  
Vice President – Legal  
55 Waugh Drive, Suite 1000  
Houston, TX 77007  
P.O. Box 1745  
Houston, Texas 77251-1745  
Main Phone: (713) 435-1000  
Fax: (713) 435-1010

#### **Specific Information relating to Site Operations**

- 4. Identify and include a brief description of the nature, timeframe(s) and status of the Respondent's business relationships with Gulfco Inc., Gulfco Marine Maintenance, Inc., Fish Engineering and Construction, Inc., Hercules Marine Services Corporation, LDL Coastal Limited L.P., LDL Management LLC, and any other previous or current owner or operator of the Site.**

Subject to the General Objections set forth previously herein, Kirby responds as follows:

Very generally speaking the only aspect of Kirby's business operations that could have any relevance to the Gulfco Marine Maintenance Superfund Site relate to the shipment of commercial products via barge. In those operations, Kirby transports commercial commodities from manufacturers to their ultimate destinations via marine vessels. After the commercial product has been off-loaded at its destination, a residual amount of that commercial product typically remains in the barge. While that residual product is often left in the barge and the barge reused for the same or compatible material, it is sometimes necessary to remove the residual from the barge for various reasons. This process is referred to as "stripping." This stripped material is typically accumulated at the stripping

facility and is either returned to the manufacturer or sold into commerce. In addition to the barge stripping, it is sometimes necessary to clean rust and barge sludge (typically referred to as "muck") from the barge.

Records indicate that during the years 1994 through 1998, Kirby contracted with Hercules Marine Services, whereby Hercules provided various services to Kirby. Whether or not those services included stripping, barge cleaning, removing muck, and/or providing basic barge repair, or any combination thereof, is reflected in the documents found in "Attachment A."<sup>1</sup>

Kirby does not transport waste and did not transport waste to the Gulfco Site nor were stripped materials (if any) intended for treatment or disposal. Hercules would take possession of a specified barge for stripping and also was in control of the residual cargo and resale of the material thereafter.

Kirby has no records or other information indicating any business relationship with any entity listed in Request Number 4 other than Hercules Marine Services.

**5. Identify all transactions with the Site owners and/or operators of the Site that resulted in materials being sent to the Site by you for any purpose, including but not limited to barge cleaning. Identify and provide all documents related to each transaction, including but not limited to invoices, manifests, shipping papers, bills of lading, receipts, log book entries, trip tickets, work orders, contracts, documents showing the nature of the materials involved, and any EPA and/or State environmental filings or correspondence. For each transaction, identify and state:**

- a. The type and purpose for the transaction;**
- b. A description of the materials involved, including their quantity and chemical content and characteristics;**
- c. Any amounts paid by you in connection with each transaction;**
- d. The date of each transaction; and**
- e. The date the materials were sent to the Site.**

Kirby objects to this Question No. 5 to the extent that it asks Kirby to create an analysis or summary of the attached records. Kirby's knowledge is limited to the information contained in the records themselves. It is Kirby's understanding based on discussions with EPA representatives that providing the documents which form the basis for Kirby's knowledge with respect to this Request is considered as being fully responsive to the Request.<sup>2</sup> Furthermore, Kirby objects to the Request to the extent it is interpreted to

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<sup>1</sup> These documents are described more specifically in Response No. 5.

<sup>2</sup> Kirby's understanding of the scope of the Request is based, in part, on a September 20 2011 discussion between Mr. William Moltz, counsel for Kirby, and Ms. Anne Foster, EPA Assistant Regional Counsel, regarding the nature and scope of the information sought by EPA by the Request. Ms. Foster further indicated that should EPA desire

require Kirby to interpret and compile available information into a newly created document since requiring such a newly created document is beyond EPA's authority under Section 104 of CERCLA and would not be the best evidence of the information contained in the original documents.

Subject to and without waiving that objection and subject to the General Objections set forth previously, Kirby responds as follows:

Attached to this Response as "Attachment A" are true and correct copies of the responsive records Kirby was able to locate after a diligent search through its corporate records.<sup>3</sup> As part of that effort, Kirby personnel have reviewed all available file boxes of archived materials potentially containing relevant documents. Documents located in those boxes which were determined to be responsive are attached.<sup>4</sup>

Those documents reflect transactions mainly between Kirby and Hercules Marine Services and Hercules Offshore. To the best of Kirby's knowledge, Hercules Marine Services and Hercules Offshore were the same or related entities during the relevant time frame although we have no specific information regarding the relationship between those entities.

**6. Identify all persons, including the Respondent, who may have arranged for disposal or treatment or arranged for transportation for disposal or treatment of materials, hazardous materials, hazardous substances, and/or hazardous wastes (materials) from various facilities to the Site. This information shall identify and state, but not be limited to the following:**

- a. The persons with whom the Respondent made such arrangements;**
- b. The precise locations from which these materials originated;**
- c. The nature, including the chemical content, characteristics, physical state (e.g., solid or liquid) and quantity (e.g., volume or weight) of all materials involved in each such arrangement;**
- d. All tests, analyses, analytical results, and manifests concerning each material involved in such transactions;**

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additional information beyond the discussed scope of the Requests, EPA would forward supplemental Request(s) to Kirby.

<sup>3</sup> By correspondence dated June 13, 2011, EPA forwarded to Kirby a "General Notice Letter" relating to the Gulfco Marine Maintenance Site. That correspondence included two compact disks containing scanned documents ostensibly related to the Site. While the disks may contain documents responsive to this Section 104(e) Request, Kirby is not reproducing those responsive documents (if any) since it is clear that EPA is already in possession of any such documents.

<sup>4</sup> While Kirby questions whether it is responsive to this Section 104(e) Request for Information, included in Attachment A is an Environmental Compliance Audit for the Site prepared for Kirby Corporation by The WCM Group dated December, 1994.



- e. **The persons who selected the location to which the materials were to be disposed and/or treated. In particular, the persons who selected the Site as a location for disposal and/or treatment of the materials. This information shall include where these persons intended to have the materials involved in each arrangement treated or disposed and all evidence of their intent;**
- f. **The amount paid in connection with each such arrangement, the method of payment, and the identity of the persons involved in each payment transaction; and**
- g. **Provide contracts or other documents reflecting such arrangements for transportation, disposal, and/or treatment of materials.**

Kirby objects to Question 6 and each of its sub-questions to the extent they purport to require Kirby to undertake an investigation of each and every person that may have utilized the Gulfco Site. The Request is unduly burdensome, unreasonable and beyond the scope of EPA's CERCLA authority. Furthermore, such a request could be interpreted to require Kirby to speculate, guess, or otherwise provide unreliable information to EPA with regard to other persons. Notwithstanding the foregoing, Kirby will answer Question 6 to the best of its ability based on records in its possession.

Subject to and without waiving that objection and subject to the General Objections set forth previously, Kirby responds as follows:

Kirby's relevant businesses are engaged in the bulk waterborne transportation by barge of commercial products, including petroleum and chemical products, manufactured, shipped, and owned by unrelated customers. To the best of Kirby's knowledge and records, it did not transport hazardous materials, hazardous substances, or hazardous wastes to the Gulfco Site for treatment or disposal. Kirby contracted with the Hercules Marine Services for various services from time to time during 1994 through 1998. The nature of those services is reflected in the documents found in Attachment A.

**7. Identify the corporate relationship(s) (such as successor by name change, successor by merger, etc.) between the named recipient of this request and its related entities as named at the time materials were sent by Respondent to the Site. Provide the corporate records which document that corporate relationship[s], including but not limited to documents related to mergers, acquisitions, sales, and assignments of liability.**

Subject to the General Objections set forth previously herein, Kirby responds as follows:

It is Kirby's understanding that this Request No. 7 does not require Kirby to provide the corporate records documenting the corporate relationship between Kirby Inland Marine, Inc. and the various entities described above.<sup>5</sup>

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<sup>5</sup> See Footnote 2, supra.

Dixie Carriers, Inc – Wholly owned subsidiary of Kirby Corporation. This entity was re-named Kirby Inland Marine, Inc. in January, 1998, which in turn merged with and is survived by Kirby Inland Marine, LP in 2000.

TPT Transportation Company – Was a subsidiary of Dixie Carriers, Inc. formed in 1993 and merged into Kirby Inland Marine, Inc. of Louisiana in 1998, which in turn subsequently merged into Kirby Inland Marine, LP in 2000.

Hollywood Marine Inc. – Merged into Kirby Inland Marine, Inc. in October, 1999, which was subsequently merged into and survived by Kirby Inland Marine, LP in 2000.

Kirby Corporation – Publicly traded holding company that has not and does not own, operate, or control any tank barges or other such physical assets which could have in any way been associated with the Gulfco site. Kirby Corporation merely holds the stock or other such indirect ownership interest in its various subsidiaries.

Scott Chotin, Inc. – Merged into Chotin Carriers, Inc. in April, 1992, which subsequently was re-named Kirby Inland Marine, Inc. of Louisiana which, in turn, subsequently merged into Kirby Inland Marine, LP in 2000.

Dixie Linehaul – Is not now and has never been a legal entity. Dixie Linehaul was an internal division of Dixie Carriers, Inc. commencing 1993.

**8. List all federal, state, and local permits, identification numbers, and/or registrations issued to the Respondent's operation for the storage, transport, and/or disposal of materials. Include respective permit numbers.**

It is Kirby's understanding that this request relates only to Respondent's operations that in any way relate to its transactions involving the Gulfco Site.<sup>6</sup> To the extent this Question No. 8 includes every federal, state, local permit, identification number, and/or registration for Kirby's entire world-wide operations, Kirby objects to this Question No. 8 as overly-broad and burdensome. Subject to and without waiving that objection and subject to the General Objections set forth previously, Kirby responds as follows:

Respondent has no such federal, state, local permit, identification number, and/or registration which could be associated with the Gulfco site.

**9. Identify whether a Notification of Hazardous Waste Activity was ever filed with EPA or the corresponding agency or official of the State. This information shall include, but not be limited to the following:**

- a. The date of such filing;
- b. The wastes described in such notice:

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<sup>6</sup> See Footnote 2, supra.

- c. **The quantity of the wastes described in such notice; and**
- d. **The identification number assigned to such facility by EPA or the State.**

It is Kirby's understanding that this request relates only to Respondent's operations that in any way relate to its transactions involving the Gulfco Site.<sup>7</sup> To the extent this Question No. 9 includes every Notification of Hazardous Waste Activities for Kirby's entire world-wide operations, Kirby objects to this Question No. 9 as overly-broad and burdensome.

Subject to and without waiving that objection and subject to the General Objections set forth previously, Kirby responds as follows:

Respondent has no such Notification of Hazardous Waste Activities which could be associated with the Gulfco site.

**10. Identify all federal, state, and local offices and agencies to which the Respondent has sent or filed hazardous substance or hazardous waste information and state the years during which such information was sent or filed.**

It is Kirby's understanding that this request relates only to Respondent's operations that in any way relate to its transactions involving the Gulfco Site.<sup>8</sup> To the extent this Question No. 10 includes every filing of all hazardous substance or hazardous waste information sent to every federal, state, or local office for Kirby's entire world-wide operations, Kirby objects to this Question No. 10 as overly-broad and burdensome.

Subject to and without waiving that objection and subject to the General Objections set forth previously, Kirby responds as follows:

Respondent has no such hazardous substance or hazardous waste information which was sent or filed and which could be associated with the Gulfco site.

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<sup>7</sup> See Footnote 2, *supra*.

<sup>8</sup> See Footnote 2, *supra*.